



October 20, 2016

Blaine Gilman, President  
Kenai Peninsula Borough Assembly  
144 North Binkley Street  
Soldotna, AK 99669

*Sent by email: bgilman@kpb.us*

**Re: Resolution 2016-056—Limits on Who May Offer Assembly Invocations:  
ACLU of Alaska’s Constitutional Concerns**

Dear President Gilman:

We hope that you are well. The Kenai Peninsula Borough Assembly, at its most recent meeting, on October 11, 2016, adopted Resolution 2016-056, which limits who may offer an invocation at the beginning of Assembly meetings. We write to express our concerns.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout Alaska who seek to preserve and expand the individual freedoms and civil liberties guaranteed by the United States and Alaska Constitutions. We engage in public advocacy and education to further those rights, and—when necessary—we litigate to defend them. We are concerned that this resolution’s newly adopted restrictions are unconstitutional; we write to explain the constitutional infirmities so that the Assembly may fix them.

We understand that until October 11 the Assembly did not limit who could offer invocations; it scheduled them on a first-come, first-serve basis. Now, however, under Resolution 2016-056, invocations are restricted to those who pass a five-part religion test. They must:

1. be an “appointed representative,” of
2. a “religious association,”
3. that has “an established presence in the Kenai Peninsula Borough,”
4. and “that regularly meet[s],”
5. “for the primary purpose of sharing a religious perspective.”

Alternatively, an invocation may be given by a chaplain who serves fire departments, law enforcement agencies, or hospitals in the borough.<sup>1</sup>

On its face, this test prohibits people who belong to no religious association or whose religious associations fail to pass the Assembly’s test from participating in the Borough’s

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<sup>1</sup> Kenai Peninsula Borough Resolution 2016-056, section 1 ¶ IX.D.4(a).

civic life by giving a legislative invocation. This violates the constitutional guarantees of equal protection and religious freedom.

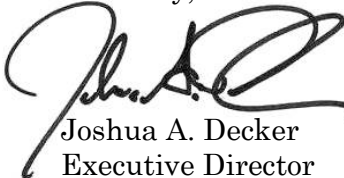
While invocations are optional, once the Assembly chooses to have them, it may not use such a test to decide who may give them. “Once it invites prayer into the public sphere, government must permit a prayer giver to address his or her own God or gods as conscience dictates, unfettered by what an administrator or judge considers to be nonsectarian.”<sup>2</sup>

Ever since the First Continental Congress convened in September 1774, “one of [the] purposes, and presumably of [the] effects,” of legislative invocations, “was not to divide, but to unite.”<sup>3</sup> In contrast, Resolution 2016-056 divides the members of the borough: the Assembly has unambiguously—and unconstitutionally—decreed who may and may not offer invocations. It undercuts the “remarkable guarantee” of America: “When the citizens of this country approach their government, they do so only as Americans, not as members of one faith or another. And that means that even in a partly legislative body, they should not confront government-sponsored worship that divides them along religious lines.”<sup>4</sup>

We see two solutions: the Assembly may either cease invocations altogether or it may return to the successful practice, in place until last week, of letting anyone who wishes to offer an invocation to do so.

We hope that the Assembly will adopt one of these solutions by Monday, November 28, 2016. In the meantime, if you or your colleagues have any questions, please feel free to contact our staff attorney, Eric Glatt, at 907.258.0044, ext. 2005, or at [eglatt@acluak.org](mailto:eglatt@acluak.org). Thank you for considering our concerns.

Sincerely,



Joshua A. Decker  
Executive Director

cc: Assembly Vice President Brent Johnson, [bjohnson@kpb.us](mailto:bjohnson@kpb.us)  
Assembly Member Dale Bagley, [dbagley@kpb.us](mailto:dbagley@kpb.us)  
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<sup>2</sup> *Town of Greece, N.Y. v. Galloway*, 134 S. Ct. 1811, 1822–23 (2014).

<sup>3</sup> *Id.* at 1833 (Alito, J., concurring).

<sup>4</sup> *Id.* at 1854 (Kagan, J., dissenting).